

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

RICHARD SIMKINS, III,	:	Case No. 3:19-cv-227
	:	
Plaintiff,	:	
	:	
vs.	:	District Judge Walter H. Rice
	:	Magistrate Judge Peter B. Silvain, Jr.
	:	
CHRISTOPHER MCINTOSH, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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REPORT AND RECOMMENDATIONS<sup>1</sup>

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**I. Introduction**

This matter is presently before the Court upon *pro se* Plaintiff Richard Simkins' Motion for Summary Judgment (Doc. #115). Plaintiff requests summary judgment against Defendant Joseph Blake, M.D., for "the tort of medical battery" and seeks nominal damages and "any other awards the Court deems just and proper." *Id.* at 774 (capitalization omitted).

In August 2021, the undersigned recommended that Defendant Blake's Motion for Judgment on the Pleadings for Failure to State a Claim (Doc. #96) be granted. (Doc. #111). Specifically, the undersigned concluded that Plaintiff failed to state a claim against Defendant Blake for medical battery.<sup>2</sup> On August 18, 2021, United States District Judge Walter H. Rice adopted the Report and Recommendations, granted Defendant Blake's Motion for Judgment on the Pleadings, and dismissed all claims against him. (Doc. #113). Given that all claims against

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<sup>1</sup> Attached is a NOTICE to the parties regarding objections to this Report and Recommendations.

<sup>2</sup> The undersigned also concluded that Plaintiff failed to state a plausible conspiracy claim sufficient to subject Defendant Blake to liability under § 1983.

Defendant Blake have been dismissed, it is recommended that Plaintiff's Motion for Summary Judgment (Doc. #115) be denied.

**IT IS THEREFORE RECOMMENDED THAT:**

Plaintiff Richard Simkins' Motion for Summary Judgment (Doc. #115) be DENIED.

December 7, 2021

*s/Peter B. Silvain, Jr.*

Peter B. Silvain, Jr.  
United States Magistrate Judge

### NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).